

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kammer et. al.
Title: LOCATION BASED SECURITY MODIFICATION SYSTEM AND METHOD
Appl. No.: 10/053,013
Filing Date: 1/18/2002
Examiner: Abedin, Shanto
Art Unit: 2436
Confirmation No.: 2103

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent application filed January 18, 2002.

The Patent Office determined that the application was entitled to 753 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office’s interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of “overlap” are limited to “periods of time . . . [that] occur on the same day.” *Wyeth*, slip op. at 8. Thus, a PTO

delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays “occur on the same day.” *Id.*

Applicants have recalculated PTA for the captioned patent under the court’s interpretation of the PTA statute, and have determined that the patent is entitled to 2000 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 2201 days

(b) Total Applicant delay: 201 days

Final PTA Determination: 2000 days

Applicants therefore respectfully request that the patent be accorded 2000 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Applicants request further that a decision on this request be **deferred or delayed** until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

Date /July 2, 2009/_____

By /Steven C. Becker/_____

FOLEY & LARDNER LLP

Customer Number: 26371

Telephone: (414) 297-5571

Facsimile: (414) 297-4900

Steven C. Becker

Attorney for Applicant

Registration No. 42,308

CLOSE WINDOW

ALL CASES SELECT CASE

Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 035451-0170

Application Number: 10/053013

Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	01/18/2002	0		
	14 month From Application date	03/18/2003	424		
	3 Year Period Starts	01/18/2005	1,096		
Edit Delete	Non-Final Office Action	10/27/2005	1,378	(954)	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	01/27/2006	1,470		
Edit Delete	Non-Final Office Action	03/23/2006	1,525		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	06/23/2006	1,617		
Edit Delete	Final Office Action	08/31/2006	1,686		
	Final Office Action + 3 months	11/30/2006	1,777		
Edit Delete	Final Office Action Response Received at PTO	12/05/2006	1,782		
Edit Delete	Advisory Action	01/04/2007	1,812		
Edit Delete	Notice of Appeal Received at PTO	02/27/2007	1,866		89
Edit Delete	Appeal Brief Received at PTO	05/29/2007	1,957		
Edit Delete	Non-Final Office Action	09/05/2007	2,056		
	Non-Final Office Action + 3 months	12/05/2007	2,147		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	02/05/2008	2,209		62
Edit Delete	Final Office Action	05/30/2008	2,324		
Edit Delete	Final Office Action Response Received at PTO	07/30/2008	2,385		
Edit Delete	Non-Final Office Action	08/11/2008	2,397		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	11/11/2008	2,489		
Edit Delete	IDS under 1.704(c)(8) filed at PTO	12/31/2008	2,539		50
Edit Delete	Final Office Action	02/10/2009	2,580		
Edit Delete	Request For Continued Examination (including amendment)	03/27/2009	2,625	(1529) 2201	
	3 Year Period Stopped	03/27/2009	2,625		
Edit Delete	Notice of Allowance	06/12/2009	2,702		
	Projected Patent Grant Date	12/22/2009	2,895		

Totals:	2,201	201
PTA:	2,000	



Version: 3.02.05

LOGIN: Roberta Cooper

IP: 10.50.33.64

Foley & Lardner LLP